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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

NO. ...533.

EURA MAE HIGGINBOTHAM GREEN, ET AL,
Petitioners,

v.

THE TEXAS GULF SULPHUR COMPANY, ET AL,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

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NO. .....

EURA MAE HIGGINBOTHAM GREEN, ET AL,
Petitioners,

v.

THE TEXAS GULF SULPHUR COMPANY, ET AL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on April 9, 1968.

OPINIONS BELOW

The opinion of the District Court, entered the 21st of November, 1966, is unreported, but appears at page 1 of the Appendix hereto.

The opinion of the Court of Appeals for the Fifth Circuit dated April 9, 1968, is published at 393 F. 2d 67, and appears at page 18 of the Appendix.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered April 9, 1968 (Appendix, page 16). A petition to rehear was denied by order entered June 19, 1968 (Appendix, page 20). The jurisdiction of this Court is involved under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

I.

Where plaintiff sues asking for a declaration of rights as between the plaintiff, the defendant State of Texas, and other defendants, is it a denial of due process for the Court to refuse to decide the rights between the plaintiff and the State of Texas, and grant a summary judgment as to all of the other defendants on the ground of non-claim and the statute of limitations when (1) the doctrines of non-claim and limitations of actions do not apply when title is in the State and (2) the facts of non-claim and limitations are vigorously disputed?

II.

Can a sovereign state deprive a landholder of his interest by means of a purported tax foreclosure sale, and then deny the former landholder an adjudication of the validity of the tax foreclosure sale by claiming sovereign immunity?

STATEMENT OF THE CASE

This suit was filed on June 26, 1964 asking the Court to quiet title to the minerals in a certain parcel of land called the "Humphries League", and specifically asking that the Court cancel, annul and vacate a certain Assessor and Collector's Tax Deed to said parcel of land, this deed being dated December 27, 1850. On October 12, 1964 a motion to dismiss the Commissioner of the General Land Office of the State of Texas (a necessary party to the cancellation of the Tax Deed) was filed. On October 28, 1965, and thereafter, motions for summary judgments were filed by the other parties, supported by affidavits and certain ex parte depositions, the validity of which depositions was questioned by motion to strike and is now questioned before this Court in a Petition for Certiorari filed on July 6, 1968 (No. 272, October Term 1968). The affidavits which contended adverse possession were disputed by two court decisions and an affidavit alleging continuous litigation.

The District Court wrote an opinion disregarding the Tax Deed of 1850 and placing title in the predecessors of the defendants other than the State of Texas by a deed supposedly executed on February 14, 1836, and recorded in 1860, ten years after the Tax Deed. The District Court also disregarded an 1885 decision of the District Court of Jefferson County, Texas, which decision clearly removed title from the defendants' predecessors in interest.

The District Court then found that *it was undisputed* that from 1884 down to 1964 the defendants other than the State of Texas held the land in dispute under deeds duly registered, and thus established full and perfect title.

No mention was made of the patent to a portion of the land in dispute to James Ingalls, on April 1, 1863, or of

the patent to another portion issued to John Douthit on April 23, 1867.

The District Court entered Judgment for the defendants on December 5, 1966, and held that "It is further ordered, adjudged and decreed that Jerry Sadler, the Commissioner of the General Land Office of the State of Texas, is dismissed as a defendant from this Cause."

REASONS FOR GRANTING THE WRIT

I.

This suit was dismissed on motion for summary judgment, based upon either a non-claim theory or a statute of limitations theory barring all rights of the plaintiffs to a determination of any interest they might have in the Humphries League. Neither of these theories is applicable to a case where title is in the sovereign State, as is true in the present suit. The "non-claim" statute, T.C.S. 5519(a) reads: "In all suits involving the title to land *not claimed by the State*, if it be shown that those holding the apparent record title thereto --- etc." (See quote at 393 F. 2d 74, emphasis added.) In the case of *Houston Oil Co. of Texas v. Gore*, (1913, Texas Civil Appeals) 159 S.W. 924, the Court stated on page 927:

> "It is settled law that as limitations does not run against the state, and as all land titles emanate from the sovereignty, limitation did not begin to run in appellee's favor until the sovereignty had parted with either the legal title by patent or grant, or the equitable title by location and survey. Kimbro v. Hamilton, 28 Tex. 560; Keys v. Mason, 44 Tex. 140; Montgomery v. Gunther, 81 Tex. 325; 16 S.W. 1073; Tarleton v. Kilpatrick, 1 Tex. Civ. App. 107, 21 S.W. 407."

That the State of Texas took title under the Tax Deed is not disputed, and is affirmed by the Ingalls patent of 1863 and the Douthit patent of 1867. It is thus a denial of due process for the Courts below to dismiss this suit on motion for summary judgment on an erroneous interpretation of law, particularly where the facts of non-claim and limitations are in dispute. (See the 1885 opinion, *Heirs of Humphries v. Heirs of English*, No. 682 in the District Court of Jefferson County, Appendix, page 21, as well as the references at 393 F. 2d, page 70, to the history of this litigation.)

II.

The District Court and Court of Appeals both denied your petitioners a hearing on the question of the validity of the Tax Deed of 1850. As pointed out above the Tax Deed must be set aside before any non-claim or limitations title can be acquired by *anyone*.

The alternative to setting aside this Tax Deed would be a declaration that title is now in the State of Texas—and such a declaration would enable the petitioners herein to pursue an alternative claim or cause of action for "preference rights" as discoverers of a vacancy under Article 5421-C, Section 6 of the Texas Civil Statutes. For this reason the summary treatment given this aspect of the case by the Court of Appeals (the first sentence of the second paragraph of the Green opinion) not only denies due process but is a clear refusal to adjudicate a real and substantial question. That this question is properly in the Federal Court appears from a study of 28 U.S.C.A. § 1331, 42 U.S.C.A. § 1983, 28 U.S.C.A. § 1343(3), and the case of *McGuire v. Sadler*, 5th Cir. 1964, 337 F. 2d 902.

CONCLUSION

No attempt has been made here to fully develop the errors committed by the Courts below. A deprivation of property without due process of law, a violation of the Fifth Amendment to the Constitution of the United States, is shown to have occurred and the Courts below should be instructed to hear and act on the questions raised. If a hearing be granted a more complete picture of the tremendous effects of these decisions can be shown this Court—Tennessee and Alabama plaintiffs being summarily denied even a hearing on claims valued in the hundreds of millions of dollars, Court decisions being disregarded, and titles to land being confused rather than clarified.

The importance of these questions is evident from the opinion in the *Humphries* case, 393 F. 2d 69.

Respectfully submitted,

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Appendix

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

EURA MAE HIGGINBOTHAM GREEN, ET AL

VS

TEXAS GULF SULPHUR COMPANY, KYLE INVESTMENT CO., ET AL

} CIVIL NO. 4901

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App. 2

District Court Opinion 11/21/66

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For the Defendants

Be it remembered that the above styled and numbered cause came on for hearing on the motion of Defendants for Summary Judgment filed pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the Court having heard and considered the pleadings, the evidence consisting of depositions, answers to interrogatories and affidavits all filed in this cause; the briefs and oral argument of counsel, and it appearing to the Court that there is no genuine issue as to any material fact, and that the undisputed facts disclose the following history of the case.

The plaintiffs claiming as heirs of William Humphrey filed this action on June 26, 1965, to recover 7/9 of the minerals in the league of land granted by the State of Coahuila and Texas to William or Pelham Humphries.

The Humphries league involved in this action is the only Spanish league that was granted by valid title to any person by the name of Humphries.

The plaintiffs allege that William Humphrey obtained the required certificate of good character on September 27, 1834; that he made application for one league; that the league involved was granted to him on the 14th of February, 1835; that because of the grant of the league to him he thereafter became entitled to additional land from the Republic of Texas; and that on the 16th of February, 1838, the certificate for the additional land was issued to him.

On the same day that plaintiffs allege that William Humphrey obtained the certificate of character and made application for the league, September 27, 1834, he with one John Crippen executed a bond for title obligating themselves to convey the two leagues (less 1,000 acres), for which they had on that day made application, to William Inglish and Wyatt Hanks.

On the 14th of February, 1836, William Humphries by general warranty deed conveyed the league to William Inglish. This deed was witnessed by Edwin O. LeGrand and Jonathan Anderson, was acknowledged by William Humphries before John G. Love, Primary Judge for the Municipality of San Augustine, was later proven up for record by the oath of Jonathan Anderson, and was recorded in the deed records of Jefferson County, Texas, in 1860. The original of this deed, which was exhibited to the Court, is in the possession of Gulf Oil Corporation which holds under W. P. H. McFaddin to whom the land was deeded by the heirs of William Inglish in 1883 by deed records of Jefferson County, Texas. A sworn photocopy of this original deed and a duly certified copy of the record of said deed were duly filed among the papers in this cause several weeks before this hearing. Plaintiffs filed an affidavit of forgery (based on belief) against the genuineness of this deed but presented no admissible evidence by affidavit or otherwise to sustain their plea.

After recording his 1883 deed from the heirs of William Inglish, McFaddin in 1884 fenced the entire league except its east boundary, which was the neches River, itself a barrier to cattle crossing to or from the league. After fencing it, McFaddin used the league for farming, for pasturing and for other purposes generally year in and year out from early 1884 down to the filing of this action.

In addition to cultivation and pasturing, McFaddin built a ranch house and tenant houses and other improvements on the land which have remained there continuously from about the middle of 1884 until this suit was filed. He executed a mineral lease in 1900 to A. F. Lucas under which the first of the numerous Spindletop oil field wells was drilled. This was the "Lucas gusher" brought in on January 10, 1901. Under other leases to T. H. Bass, Unity Oil Company and Yount-Lee Oil Company, there has been continuous oil production under the McFaddin title without cessation since January 10, 1901. And hundreds of large oil tanks and other usual equipment of oil fields have been upon the land for thirty years or more.

In the latter part of 1949 under McFaddin leases Texas Gulf Sulphur Company, a defendant, discovered sulphur in the league in marketable quantities. The company drilled at least 75 wells to bleed out the cold, salt-heavy water so that super-heated water could be forced into the formation to melt and thus produce the sulphur. When the cold water was removed, Texas Gulf Sulphur began producing sulphur from the land in April, 1956, after which time more than 300 sulphur producing wells have been drilled and used in the daily and continuous sulphur production. Since the first oil was produced in 1901 and since the sulphur operations began in 1949 and actual production in 1956, oil or sulphur or both have been produced without cessation.

The affidavits and depositions on file and record evidence which is not controverted by eompetent affidavits or otherwise establish indisputably that from early 1884 down to the filing of this suit, a period of more than 80 years, McFaddin and his successors in interest have used the land continuously without any break, under deeds duly

registered, describing the entire survey, paying taxes, with definite assertion of title at all times to all of said property without in any manner recognizing any claim asserted by anyone else. The undisputed facts show continuous adverse possession of said land by W. P. H. McFaddin and his successors in interest under claim of right, and payment of taxes for continuous periods of five, ten and twenty-five years before the filing of this suit by plaintiffs, which establish without dispute full and perfect title in the defendants against the world.

During the more than 100 year period after February 14, 1836, when William Humphries conveyed the league to William Inglish nothing in the record indicates that the plaintiffs, their lineage predecessors, or any of them, ever paid any taxes on any part of the league nor had possession of or exercised any character of claim with respect to any of it. There was complete non-claim to and non-use of any part of the league by any of the plaintiffs or anyone under whom they claim.

The Court makes the following specific findings of fact and conclusions of law:

FINDINGS OF FACT

1.

On February 14, 1836, William Humphries executed the deed to all of the league in controversy to William Inglish.

2.

W. P. H. McFaddin and his successors in interest, including the defendants, have had peaceable and adverse possession of all of the property in controversy for more than 80 years prior to the filing of this suit.

3.

W. P. H. McFaddin and his successors in title have paid all taxes before delinquency for periods of more than twenty-five consecutive years during the period of adverse possession.

4.

A complete non-use of the land, or any part of it, by the plaintiffs and those from whom they claim from February 14, 1836 to date, and a total absence of claim from February 14, 1836 down to at least the year 1952.

CONCLUSIONS OF LAW

1.

The ancient deed from William Humphries to William Inglish, and the ancient record thereof, exhibited to and filed with the Court, establish the execution of the deed and its genuineness, and there is no evidence that the deed was forged. So any plaintiff claiming as an heir of William Humphries cannot recover.

2.

W. P. H. McFaddin and his successors, including all of the defendants herein, have had such continuous, peaceable and adverse possession, claim to, and use of the league in controversy as has vested in them full and perfect title thereto under the five, ten and twenty-five year statutes of limitations of the State of Texas, precluding any claims of plaintiffs and forever barring plaintiffs from recovery of any of said league.

Because of the failure of the plaintiffs and their predecessors to assert claim to the league, to use it, to pay taxes, or to assert any dominion with respect thereto for more than 100 years after 1836, in accordance with the foregoing findings of undisputed facts, during the first 4 years of which period a parol conveyance of the land was valid, it is conclusively presumed as a matter of law that plaintiffs have no title to any of the league.

Therefore, as under the undisputed and uncontroverted facts the plaintiffs have failed to show title to any of the league in controversy and as defendants have shown title thereto, the motion of defendants for summary judgment is in all things granted. Judgment will be entered for the defendants.

ENTERED this 21 day of November, 1966, in Beaumont, Texas.

JOE J. FISHER
UNITED STATES DISTRICT JUDGE

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

EURA MAE HIGGINBOTHAM GREEN, ET AL

VS.

TEXAS GULF SULPHUR COMPANY, KYLE INVESTMENT CO., ET AL

CIVIL NO. 4901

(Filed December 5, 1966)

Be it Remembered: This action came on for hearing on defendants' motion for summary judgment, and the court having granted said motion, and having filed Findings of Fact and Conclusions of Law herein, accordingly, it is the order, judgment and decree of the court that the plaintiffs herein take nothing by this suit to recover from the defendants the title to and possession of, and all other relief sought by plaintiffs with respect to the minerals in the league of land in Jefferson County, Texas, alleged by plaintiffs to have been titled on February 14, 1835, by The State of Coahuila and Texas to William Humphries, sometimes referred to as Pelham Humphries, as appears from the original grant in Volume 22, pages 307-310, inclusive, in the General Land Office of The State of Texas, at Austin, Texas; and all of the rights, titles, interests, and claims of plaintiffs are divested out of them and vested in defendants who shall have their writs of possession and

such other process when and as often as may be necessary to enforce this decree.

The names of all of the plaintiffs in this cause are:

Eura Mae Higginbotham Green and husband, Hillard M. Green
Effie Mae Dollar and husband, Lynn Dollar
Elsie M. Gentle and husband, Russell Gentle
Lucille H. Guthrie and husband, Jackson Guthrie
Hermon C. Higginbotham and wife, Bessie Higginbotham
Samuel Ollis Higginbotham and wife, Louise Higginbotham
Franklin Harrelton Higginbotham and wife, Ruth Higginbotham
Cecil Ray Higginbotham and wife, Mary Higginbotham
Jack Higginbotham and wife, Harvey Bell Higginbotham
Thomas D. Higginbotham and wife, Mamie Higginbotham
Bernice B. Humphrey, a feme sole
Clemuel Roy Johnson and wife, Eunice Johnson
Willie Arthur Johnson and wife, Jewell Johnson
Sybil M. Jones, a widow
Beulah H. Knowles and husband, Henry C. Knowles
Eulis Frank Lee and wife, Sue Lee
Esther H. Lee and husband, Emmett Lee
Lena H. McKnight and husband, George McKnight
Wesley Buell Morrison and wife, Bertha Morrison
Clifton Morrison and wife, Ella Morrison
Russell Morrison and wife, Maude Morrison
Mary N. Nance and husband, Marvin C. Nance
Cora L. Noah, a widow
Odera Morrison Pate and husband, Levi Pate
Cordie Penny and husband, Gilbert D. Penny
Francis Roberts, a widow
Tula H. Scott and husband, Leonard Scott
Julia B. Stinson and husband, Thomas Stinson

Wilfred Henry Webb and wife, Myra Webb
Maude W. Voorhies and husband, S. O. Voorhies
E. M. Adcock and wife, Mary Lou Adcock
Barbara Ann Bickford and husband, Lonnie Edward Bickford
Odie Blaylock and wife, Hazel Blaylock
Mrs. Della Brown, a widow
Mattie Jean Cates and husband, Dock E. Cates
Ollie R. Certain, a widow
Autnia Lou Conner and husband, William Monroe Conner
Marjorie R. Clark and husband, Edward Clark
Dollie R. Cope and husband T. Winfield Cope
Carl Easterly and wife, Margaret Mason Easterly
Lillie Mae Easterly, a widow
Elizabeth S. Green and husband, Charles Green
Sarah R. Grisson and husband, Howard Grissom
Estie F. Green, a widow
Ammon F. Humphrey and wife, Lela Humphrey
Charlie R. Humphrey and wife, Joyce Humphrey
Ernest Humphrey and wife, Beatrice Humphrey
Luther Humphrey and wife, Pauline Humphrey
Willie Humphrey and wife, Ava Humphrey
Lovener Humphrey, single
Gaither Keener and wife, Hettie McWilliams Keener
Flossie H. Keener, a widow
Martha Louise McCormick and husband, Morris McCormick
Kassie R. McBride and husband, Dewey McBride
Mary Miller, a feme sole
Mrs. Lillie C. Roberts, a widow
Frank Roberts, single
Hosea B. Roberts, single
Clarence Roberts and wife, Winnie Roberts
Reece Roberts and wife, Berta Roberts

Ruth Maffitt Roberts, a widow
Silas Roberts and wife, Ona Mae Roberts
Willus C. Roberts and wife, Sallie Roberts
Mrs. Allie Ruehling, a widow
Louise Swindell, a feme sole
Charles H. Walling and wife, Vicie R. Walling
John A. Walling and wife, Audie B. Walling
Austie F. Wheeler and husband, Luther Wheeler

The defendants in this cause are:

* The names in brackets are recited as the name appears in plaintiffs' petition.

Texas Gulf Sulphur Company
Kyle Investment Company
Lower Neches Valley Authority
Boehck Engineering Company
Central Freight Lines, Inc.
Spindletop Engineering & Construction Company
Wallace Company, Inc.
Jeff Chaison Townsite Company
Gulf States Utilities Company
Unity Oil Company
Texas Eastern Transmission Corporation
Magnolia Petroleum Company
Oakwood Realty Company
Texas & New Orleans Railway Company
DuPoint DeNemours and Company
Texaco, Inc. (The Texas Company)
S. & E. T. Railway Company (T & NO RR CO)
Kansas City Southern Railway Company
Socony Mobil Oil Company, Incorporated
Pan American Petroleum Corporation
Indiana Oil Purchasing Company
Gulf Oil Corporation

Gulf Refining Company
Sun Oil Company
Sun Pipeline Company
Reconstruction Finance Corporation
American National Bank of Beaumont
The Frost National Bank
The Estate of E. L. Nall, Deceased
The Estate of Mrs. Lola A. Nall, Deceased
Agnes Nall Parks and Angie Nall, Executrixes of the Estate of Mrs. Lola A. Nall, Deceased
Estate of Mary Weed Fletcher, Deceased
Jack L. Fletcher, Executor and Trustee of the Mary Weed Fletcher Trust
Jack L. Fletcher, Individually
Agnes Nall Parks, Individually
Angie Nall, Individually
Estate of Margaret Weed Jackson, Deceased
Bruce M. Jackson, Executor of the Estate of Margaret Weed Jackson, Deceased
Bruce M. Jackson, Individually
Estate of Marrs McLean, Deceased
McLean Trust
Ruth McLean Bowman, Executrix of the Estate of Marrs McLean, Deceased and Trustee of the McLean Trust
Ruth McLean Bowman, Individually
Estate of R. E. Masterson, Deceased
Kate C. Masterson, Executrix of the Estate of R. E. Masterson, Deceased
Kate C. Masterson, Individually
American National Bank, individually and as Trustee of the Estate of R. E. Masterson, Deceased
Estate of B. D. Moore, Deceased
B. D. Moore, Jr., and Charles H. Moore, Executors and Trustees of the Estate of B. D. Moore, Deceased

B. D. Moore, Jr., Individually
Charles H. Moore, Individually
Estate of Gladys B. Price, Deceased
J. Barr (Bain) Price, Sr., Executor of the Estate of Gladys B. Price, Deceased
J. Barr (Bain) Price, Sr., Individually
Estate of L. Lillie Pierce, Deceased
Mrs. L. L. Johnson, Individually and as Executrix of the Estate of L. Lillie Pierce, Deceased
Stella Oil Company
Jerry Hesler McNeill, Jr.
Jack Gober McNeill
Cora Lee Naylor
W. I. Naylor
Mrs. Marie Bordages
J. D. Bordages
Mrs. Edward B. (Ethel) Hebert, a widow
Louis M. Hebert
Clarfey J. Hebert
Harry M. Hebert
Miss Eye Hebert, a feme sole
Mrs. Seth J. Hebert, a widow
Emelie C. Viterbo
V. D. Viterbo
Rosa Leicht
Harry Leicht
Fayette A. Leard, surviving husband of Mrs. Fayette A. Leard
W. P. H. McFaddin, Jr. (W. P. H. McFadden, Jr.)
J. L. C. McFaddin (J. L. C. McFadden)
Mamie McFaddin Ward, a widow (Mamie McFadden Ward, a widow)
Perry McFaddin Duncan (Percy McFadden Duncan)
Mrs. Clyde W. Kyle, Sr., a widow

W. W. Kyle, Jr. and wife, Carol T. Kyle
Brudge E. Kyle and wife, Jules H. Kyle
Percy Alexander Marshall
Signora M. Munday and husband, Robert T. Munday
Henry Lee Levy
Isadore Feinbert
Ada Roos and husband, Henry Roos
Mrs. Lillie Roos, a widow
Aileen Roos Vener and husband, Henry Vener
Clifton L. Bruner
J. T. Shelby
Mrs. Louise Duff
F. M. Hebert
Mary Autry Higgins
E. G. Bartlett
Mrs. Camelia B. McFaddin, a widow (Mrs. Camelia B. McFadden, a widow)
DiVernon McFaddin Cordts and husband, E. G. Cordts
Margaret L. Lorenz
William H. Tinlin
Mrs. Tony (Lilly) Tortorise, a widow
Mrs. Margaret Plumbo, a widow
Dr. William A. Smith
J. P. Friedman
Edna E. Myers
C. Frank Myers
Scott W. Myers
Walter F. Myers, Individually and as Trustee for unknown persons to the plaintiffs
Wheeler Nazro
Jessie Pugh
Charles R. Crocker
The Sealy & Smith Foundation
Hortense Pollock

Sol Dreyfus
R. Liebman
Martin Wiess
Edith Josephine Wather, a widow
Elsie C. Freeman and husband, O. B. Freeman
Cordelia Wolf, a widow
Bessie Myers and husband, Winfield Myers
Leoma Richardson and husband, R. N. Richardson
Max Geottinger
Amelia B. McDaniel
George W. McDaniel
J. B. McAdams
Lavania P. McDaniel
Robert H. McDaniel
Sallie P. Willis

It is further ordered, adjudged and decreed that Jerry Sadler, the Commissioner of the General Land Office of the State of Texas, is dismissed as a defendant from this cause, all other orders on pleas and motions heretofore granted or denied are confirmed and merged into this decree; and all motions and pleas not heretofore determined are in all things denied. All parties, plaintiffs, defendants, cross-defendants and intervenors, except those whose names are above set out, and all causes of action not specifically disposed of herein, are in all things dismissed from this cause without prejudice. It is further ordered, adjudged and decreed that all costs in this cause be taxed against the above named plaintiffs for which execution may issue.

Rendered and ordered entered on this 5th day of December, 1966.

/s/ Joe J. Fisher
United States District Judge

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 24854

EURA MAE HIGGINBOTHAM GREEN, ET AL,
Appellants,

versus

THE TEXAS GULF SULPHUR COMPANY, ET AL,
Appellees.

Appeal from the United States District Court for the Eastern District of Texas.

(April 9, 1968.)

Before JONES, WISDOM and THORNBERRY, Circuit Judges.

THORNBERRY, Circuit Judge: This diversity suit is the third in a trilogy concerning the ownership of the Humphries survey. *See Humphries v. Texas Gulf Sulphur Company*, No. 24,985 (, 1968); *Beasley v. W. P. H. McFaddin*, No. 24,977 (, 1968). The heirs in this case claim only a mineral interest. They urge first that a tax deed in 1850 vested title in the State of Texas and second that if they could have the tax deed set aside, they would be entitled to the minerals rather than appellees. Appellants joined the Commissioner of the General Land

Office and sought a declaratory judgment that the tax deed was invalid. The State of Texas moved to dismiss the Commissioner on the ground of sovereign immunity, and the final judgment of the district court so ordered. The heirs attack this dismissal, contending that the suit could not properly be determined without consideration of the tax deed. Following his opinion in the *Humphries* and *Beasley* cases the trial judge granted appellees' summary judgment without commenting on the validity of the tax deed.

If the tax deed simply vested title in the State of Texas, the well-settled doctrine that a party in a trespass-to-try-title action must recover on the strength of his own title, not the weakness of his opponents', would preclude appellants' recovery. Thus their only relevant argument is that the tax deed was invalid and that the dismissal of the State of Texas on grounds of sovereign immunity was improper under *McGuire v. Sadler*, 5th Cir. 1964, 334 F.2d 902 and requires a remand to determine the validity of the tax deed. Whatever the soundness of that argument, our reasoning in *Humphries* and *Beasley* confirms that all Humphries heirs are without title and renders a remand unnecessary. Appellants cannot use the shield of sovereignty to escape the conclusive effect of their own 125 years of complete non-claim.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1967

No. 24854

D. C. Docket Nos. CA 4901, 4916 and 4982

EURA MAE HIGGINBOTHAM GREEN, ET AL,
Appellants,

versus

THE TEXAS GULF SULPHUR COMPANY, ET AL,
Appellees.

Appeal from the United States District Court for the Eastern District of Texas.

Before JONES, WISDOM and THORNBERRY, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Eura Mae Higginbotham Green, and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

April 9, 1968

Issued as Mandate: June 27, 1968

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 24854

EURA MAE HIGGINBOTHAM GREEN, ET AL,
Appellants,

versus

THE TEXAS GULF SULPHUR COMPANY, ET AL,
Appellees.

Appeal from the United States District Court for the Eastern District of Texas.

ON PETITION FOR REHEARING EN BANC

(June 19, 1968)

(Filed June 19, 1968)

Before JONES, WISDOM and THORNBERRY, Circuit Judges.

PERCURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, Rule 25(a), subpar. (b), the Petition for Rehearing En Banc is DENIED.

Opinion and Order, 5/20/1885

NO. 682

Heirs of William alias Pelham Humphries, Deceased vs. Henry E. Simpson, et al.	11th day of the Term District Court Jefferson County, May Term. May 20th, 1885.

And now on this day came the plaintiffs Mrs. Jane McFaddin (widow) Mahala Coble, and her husband, Thomas Coble, by their attorney, Tom J. Russell, and Thomas Anderson minor son of Garrison Anderson, and his wife Amanda Anderson, Deceased, who was a daughter of Wm. Humphries deceased by his special guardian and attorney ad litem, T. J. Russell, and announced ready for trial, and the defendants all came not viz: James Ingalls, Sr., Mollie E. Langham, Wife of James B. Langham, Jr. who joined her in this suit and only heirs of Henry E. Simpson, Deceased, and Mary Brewer, surviving wife of Elisha O. Brewer, deceased, the heirs of James L. Dollas, deceased, viz: J. W. Dollas, J. C. Dollas, W. A. Dollas and M. Epsie Dwyer (formerly Dollas joined in this suit by her husband W. E. Dwyer; the heirs of William English (alias Inglish) deceased, viz R. B. English, George English, Elizabeth English, Howard Anderson, Elizabeth Anderson, William L. Fite, Pamela Fite, Marana Epps, Soliva Whetstone, Warnick Whetstone, Miranda Smith, William English, Fletcher English, William W. English, John B. English, Evalina Davis, and her husband Thomas L. Davis, and the defendant M. W. Humphries and the heirs of S. B. Dozier, deceased, viz: W. A. W. Dozier, Billie Dozier,

A. S. Theriott and Lucy Theriott, all of which defendants had filed answers and pleadings in this cause, as appear of record, but having appeared not and made no further defense and the said plaintiffs heirs of William Humphries by their attorney, and guardian as aforesaid having waived a jury and submitted the cause, and the matters of fact, as well as of law to the court and the court having heard all the pleadings of the plaintiffs and of said defendant read and having heard the evidence plaintiffs, and considered the same, finds the facts and the law to be for the plaintiffs. Whereupon it is ordered, adjudged and decreed that the said above named plaintiffs do have and recover of said above named defendants, all and singular of the lands and premises described in plaintiffs petition, to wit: One League of land situate in the County of Jefferson, and State of Texas, and being the same which was, on the 14th day of February, A.D. 1835, granted by the government of Mexico, Pelham (alias William Humphries the ancestor of Plaintiffs and is described as follows to wit: On the West bank of the River Neches, and beginning at the corner of J. W. Bullock and John A. Veatch surveys, an oak tree, 9 inches in diameter bears South 10° West 25 varas Distant. Thence South 45° West 7111 varas made second corner by mound and stakes in prairie; thence East 7320 varas made third corner, mound and stakes in prairie; thence North 5208 varas made the fourth corner in a Marsh; thence West 2300 varas to fifth corner and thence west 198 varas to the place of beginning—together with all the rights, members, heridetaments and appurtenances to said league of land belonging or in any wise incident and it is ordered and adjudged that said plaintiff have their writ of possession and have restitution of said premises and have and recover of said defendants all the costs in this behalf expended. And that execution may issue for the same in

favor of the plaintiffs and in favor of the officers of the Court. And it is further ordered and decreed that the plaintiffs and defendants respectively be permitted to withdraw from the records of this court their title papers filed in this cause, upon their leaving on file certified copies in lieu thereof.

Thereupon Court adjourned until tomorrow morning at 9 o'clock.

THE STATE OF TEXAS }
COUNTY OF JEFFERSON }

I. R. E. COWAN, Clerk, District Courts, in and for Jefferson County, Texas, do hereby certify that the above and foregoing is a true and correct copy of Final Judgment in Cause No. 682, styled HEIRS OF WILLIAM ALIAS PELHAM HUMPHRIES, DECEASED VS. HENRY E. SIMPSON, ET AL., as the same appears of record in Volume F, page 419 of the Civil Minutes, 58th Judicial District Court, and remains on file in my office.

Witness my hand and seal of Court, at office, in Beaumont, Texas, this the 21 day of February, A.D. 1952.

R. E. COWAN, CLERK, DISTRICT
COURTS, JEFFERSON COUNTY, TEXAS.
BY /s/ Joe A. Hulgan DEPUTY.

[S E A L]

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

NO. 533

EURA MAE HIGGINBOTHAM GREEN, ET AL.,
Petitioners,

v.

THE TEXAS GULF SULPHUR COMPANY, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

CRAWFORD C. MARTIN
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IN THE

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THE TEXAS GULF SULPHUR COMPANY, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

May it please the Court:

This brief is filed in behalf of respondent, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, opposing the petition for writ of certiorari.

Respondent respectfully prays this Court not to review this cause but to deny the petition for writ of certiorari, because of the following:

1. The questions presented are foreign to the decision of the Court of Appeals.

2. The decision of the Court of Appeals is not in conflict with the decision of another Court of Appeals or of The Supreme Court.

3. The decision of the Court of Appeals does not involve an important question of federal law which has not been, but should be, settled by The Supreme Court.

4. The decision below turns on its own particular facts and will not affect anyone except the litigants.

5. The decision of the Court of Appeals in this cause is correct, with due regard for the questions sought to be raised by the petition for writ.

Reasons why Certiorari Should not be Granted

The Court of Appeals decided this cause against petitioners, holding that:

> "Appellants cannot use the shield of sovereignty to escape the conclusive effect of their own 125 years of complete non-claim." 393 F.2d 67 (1968) at p. 68

The Court said in this cause:

> "This diversity suit is the third in a trilogy concerning the ownership of the Humphries survey. See Humphries v. Texas Gulf Sulphur Company, 5 Cir. 1968, 393 F.2d 69; Beasley v. McFaddin, 5 Cir. 1968, 393 F.2d 68."

Petitioners cite V.C.S. 5519a (p. 4) as the "non-claim" statute, when actually the provisions of this statute deprive title against those who have "not exercised dominion over such land." This statute would deprive petitioners of title rather than aid them.

Petitioners cite *Houston Oil Co. of Texas v. Gore,* 159 S.W. 924, p. 927, but failed to set forth the sentence in this opinion immediately preceding, which reads:

> "The plaintiff seeking to recover on his limitation title under the ten-year statute could only recover *on the strength of his own title.*" (emphasis added)

The *Houston Oil Co.* case is of no help to petitioners, for in addition to the above, the holding of the Court was against the claimants under the patent from the State.

Petitioners cite 393 F.2d 69, *Humphries v. Texas Gulf Sulphur Company,* (p. 5), one of the trilogy of suits referred to by the Court of Appeals in the instant case. The following is set forth from the opinion in the *Humphries* case:

> "This diversity action proves that unlike old soldiers, expectant heirs never even fade away. It is one of a trilogy that hopefully will terminate the continuing battle between the heirs and the active users of the Humphries survey.' . . ."
>
> "'The other cases are Beasley v. McFaddin, Jr., 5 Cir. 1968, 393 F.2d 68; Green v. Texas Gulf Sulphur Company, 5 Cir. 1968, 393 F.2d 67. The history of the litigious nature of the Humphries heirs is documented in: Glover v. McFaddin, 5th Cir. 1953, 205 F.2d 1; Jones v. McFaddin, 382 S.W. 2d 277 (Tex.Civ.App.—Texarkana 1964, writ ref'd n.r.e.); Foster v. Gulf Oil Corp., 335 S.W.2d 845 (Tex.Civ.App.—Beaumont, 1960, writ ref'd n.r.e.); McBride v. Gulf Oil Corp., 292 S.W.2d 151 (Tex.Civ.App.—Beaumont 1956, writ ref'd n.r.e.)."
>
> ". . . The land involved in this case, known as the Humphries survey, is located in Southeast Texas.

It has made an enormous economic contribution to the state, primarily because of the famed Spindletop Oil Field discovered there in 1901. . .'

". . . In the instant case the assertion is that the land was granted to Pelham and not William Humphries and that all subsequent conveyances are therefore fraudulent; in the Beasley case the assertion is that the William Humphries who conveyed to Inglish was not the heir of Pelham and consequently had nothing to convey; finally, the Green case presents the issue of whether a tax deed in 1850 vested title to the land in the State of Texas. . ."

". . . These endless suits have been an harassment to the land and mineral owners as well as a useless expense of time and money by litigants and courts. . ."

". . . Indeed, there is no evidence that appellants or their predecessors ever had possession of the land, paid any taxes, exercised any dominion over the land, or even asserted a claim to it. . ."

". . . The Pelham Humphries litigation is over and the Humphries heirs have no title in the league of land."

Petitioners (p. 5) propose an alternative to enable them to pursue a cause of action as discoverers of a vacancy under Article 5421-C, Section 6 of the Texas Civil Statutes. The instant cause has no relation to a proposed claim under the Texas Vacancy Statute, therefore, their complaint is not pertinent.

Petitioners (p. 5) cite 28 U.S.C.A., Sec. 1331, 42 U.S.C.A., Sec. 1983, 28 U.S.C.A., Sec. 1343(3), and the case of *McGuire v. Sadler,* 5th Cir. 1964, 337 F.2d 902.

28 U.S.C.A., Sec. 1331, concerns the amount in con-

troversy and has no bearing on the questions presented in the petition.

42 U.S.C.A., Sec. 1983, provides for civil action for deprivation of rights and does not relate to this cause.

28 U.S.C.A., Sec. 1343(3) is a civil rights and elective franchise statute providing district court jurisdiction of civil actions, Sec. (3), to redress the deprivation of rights "secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

This statute is not pertinent to this cause.

McGuire v. Sadler, 5th Cir. 1964, 337 F.2d 902 (1964), is not in point here. This case is distinguished from the *McGuire* case because plaintiffs in this case seek a decree quieting title to the land in controversy, and removing a cloud cast upon their alleged title, asking the Court to enter a declaratory judgment cancelling a Tax Deed dated December 27, 1850, to the State of Texas. Whereas in the *McGuire* case, the plaintiff sought injunctive relief against the Land Commissioner to enjoin the sale of land by the Commissioner and to prevent threatened action by the Commissioner constituting a deprivation of the plaintiff's constitutional rights.

The *McGuire* case was a class action against the Land Commissioner of Texas and others for rescission of sales by the Commissioner of alleged public school fund land and to enjoin the sale of other such land within a certain survey.

According to the opinion of the United States Court of Appeals, Fifth Circuit, October 19, 1964, written by

Circuit Judge Wisdom, L. L. McGuire, the plaintiff-appellant, brought suit against the Land Commissioner of Texas alleging that he is the owner of certain land in Presidio County and that the Commissioner under color of law, is about to sell as part of a conspiracy to deprive him of his land and to deprive others similarly situated of their land because of newly found mineral potential in the county.

The *McGuire* case is distinguished from the instant case on the facts.

The Court held in the *McGuire* case:

> ". . . Nor can this action be barred under the Eleventh Amendment as a suit against the state. By a wholesome fiction, a credit to fictions that Bentham would have endorsed, *a suit against a state officer for injunctive relief is regarded as a private suit, if the threatened action constitutes a deprivation of the plaintiff's basic federal constitutional rights.* Ex Parte Young, 1908, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714; Georgia R.R. & Banking Co. v. Redwine, 1952, 342 U.S. 299, 72 S.Ct. 321, 96 L.Ed. 335." (emphasis added)

CONCLUSION

It is evident from the foregoing that there is no merit in the petition for a writ of certiorari in this cause. Therefore, it is respectfully prayed that the Writ of Certiorari be denied.

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CERTIFICATE

I, Houghton Brownlee, Jr., attorney for respondent Jerry Sadler, Commissioner of the General Land Office of the State of Texas, on this the 9th day of October, 1968, have served copies of this respondent's brief opposing the petition for writ of certiorari on the petitioners named therein by depositing the same in the United States Post Office, with air mail first class postage prepaid, addressed to the Hon. Sizer Chambliss, the attorney for the petitioners, 400 Pioneer Building, Chattanooga, Tennessee, 37402, by United States Certified Mail, with return receipt requested.

HOUGHTON BROWNLEE, JR.

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IN THE

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Respondents

RESPONDENTS' BRIEF OPPOSING THE PETITION FOR WRIT OF CERTIORARI

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IN THE

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EURA MAE HIGGINBOTHAM GREEN, ET AL.,
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THE TEXAS GULF SULPHUR COMPANY, ET AL.,
Respondents

RESPONDENTS' BRIEF OPPOSING THE PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

The respondents respectfully pray that this Court deny the petition for writ of certiorari, because of the following;

I.

The opinions of the Court of Appeals (Fifth Circuit) relating to this case are reported in 393 F.2d at pages 67, 68 and 69, respectively.

II.

Petitioners' theory is well stated in the opinion of the Court of Appeals: "They urge first that a tax deed in 1850 vested title in the State of Texas and second that if they could have the tax deed set aside, they would be entitled to the minerals rather than appellees", 393 F.2d 67, at page 68.

It is elementary that a plaintiff must recover upon the strength of his own title to the land, yet the petitioners, plaintiffs in the trial court, in the first sentence on page 5 of their petition for certiorari state "That the State of Texas took title under the tax deed is not disputed, and is affirmed by the Ingalls' patent of 1863 and the Douthit patent of 1867."

This is followed on the same page by petitioners' statement that if the tax deed be set aside, petitioners could pursue a claim as discoverers of a vacancy under Section 6 of Article 5421c of the Texas Civil Statutes. Petitioners do not set out the several pages of said Section 6 and make no claim that they have complied with any of its provisions, only saying that a declaration that title is in the State of Texas "would enable" them to claim "as discoverers of a vacancy".

That the Humphries league in controversy is not "a vacancy" is established by the third paragraph of said Section 6 of Article 5421c of the Texas Civil Statutes[1]; by petitioners' (plaintiffs), complaint in the trial court alleging that the described tract of land was titled to William Humphries on February 14, 1835[2]; by the de-

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1. Appendix to this Brief, p. 9.

2. Plaintiffs' Original Complaint, Transcript of Record, Vol. 1 of 1, p. 44.

cision of the Court of Civil Appeals in *John I. Foster, Jr. v. Gulf Oil Corporation* in which the Supreme Court of Texas refused writ of error, n.r.e. on October 5, 1960.[3]

In the *Foster* case the appellate court stated, "The land in suit unquestionably became 'titled' when it was granted to Humphries", 335 S.W.2d 847; that "as reflected by appellant's petition, field notes which were made for Humphries and which include the land are on file in the General Land Office (p. 847-848); and that "We think this sufficient, regardless of the true state of the title, to show that, within the purview of Article 5421c, the land is surveyed and titled land and not vacant and unsurveyed land" (p. 848).

We believe the foregoing establishes that the area involved is not a "vacancy". If it is not a vacancy, and if it be public area belonging to the State of Texas, petitioners show no right in themselves, nor in any other party, to acquire it or to recover it. If it be public land belonging to the State of Texas, petitioners are not entitled to it, or to any prior right to it, for the mere asking, but the land must be sold to the highest bidder in accordance with the statutes of the State of Texas whereunder petitioners have no right superior to any other person to acquire public lands.

Petitioners allege no compliance with the provisions of the statute whereunder public land may be purchased by the individual submitting the highest bid after the land has been duly advertised for sale.[4] John Doe and petitioners have equal rights to public lands, but neither

3. 335 S.W.2d 845; 161 Texas Supreme Court Reports, p. 632.

4. Appendix this Brief, p. 9.

may recover public lands without showing some right to acquire same under the laws of Texas.

III.

Plaintiffs in claiming solely as heirs of William Humphries[5] overlook the legal effect of the 1836 deed from William Humphries to William English[6] which left no title in Humphries to pass to his heirs.

IV.

Petitioners do not challenge the correctness of the decisions of the courts below that the non-claim and non-use of the land by petitioners and their predecessors for more than 125 years, measured against respondents' assertion of title and use of the land for at least more than 50 years under their recorded deeds, vested complete title in respondents presumptively as a matter of law and also under the 5, 10 and 25 year statutes of limitations of the State of Texas, Articles 5509, 5510 and 5519.[7]

V.

Petitioners do not controvert or deny the facts stated in the affidavits filed by respondents which establish that more than 50 years before this suit was filed respondents' predecessors in title under recorded deeds entered upon and used all of the land for homes, for farming, for pasturing, for mineral production, as well as other uses.

---

5. Original Complaint, Transcript of Record, Vol. 1 of 1, p. 39, par. 5 and p. 56, par. 15.

6. Transcript, p. 175. Warranty Deed William Humphries to William English, dated Feb. 14, 1836, recorded Dec. 26, 1860, in Vol. M, p. 399, Deed Records of Jefferson County, Texas.

7. Appendix to this Brief, pp. 10-11; Humphries v. Texas Gulf Sulphur Co., 393 F.2d 69, at p. 71, par. (1) et seq.

These affidavits reflect the unbroken and continuous possession and use of the land, including the minerals thereof, day-in and day-out by respondents and their predecessors, without break, for more than 50 years, together with the payment of taxes. During all of this period, and at all times prior thereto from 1836, petitioners asserted no claim, had no possession and made no use of any of the land.[8]

VI.

The judgment of May 20, 1885, for Mrs. Jane McFaddin and others against Henry E. Simpson and others did not affect the title that William English acquired from William Humphries in 1836,[9] nor the title that the heirs of William English theretofore conveyed to W. P. H. McFaddin, respondents' predecessors in title.[10]

VII.

SUMMARY

The opinions of the Court of Appeals in the three Humphries league cases, 393 F.2d, pages 67, 68 and 69 are correct, and should not be reviewed by this Court

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8. In Volume 1, W.P.H. McFaddin, 100; J. H. Eastland and Henry L. Martens, 104; Roscoe Hannan and John Harbin, 137; John P. Brady, 143; Eugene C. Brazeal, 146; J.L.C. McFaddin, 151; Walter F. Myers, 165; In Volume 2, D. A. Snyder, 412; E. G. Bartlett, 414; Leopold H. Gravier, 416; Gus E. Watkins, 418; J. Frank Lewis, 429; J. W. Newton, 437; R. G. Sanders, 440; John J. Wheat, 442; W. N. Adams, 448; the perpetuated testimony of Sidney E. Broussard and others taken in 1939, 550-766.

9. Footnote 6, ante.

10. Common File, Volume 1 of 2 parts, pp. 17-22. Deed dated Dec. 31, 1883, recorded Deed Records of Jefferson County, Texas, Jan. 10, 1884, in Volume W, page 322.

because (1) petitioners as plaintiffs alleging title to be in the State of Texas cannot recover; (2) petitioners claiming as heirs of William Humphries have no title as Humphries conveyed the land to William English; (3) the non-claim of petitioners and their predecessors from 1836 to the filing of this suit, as a matter of law and presumptively, refutes their claim of title; and (4) the adverse possession of the land by respondents and their predecessors for more than 50 years clothes them with full title under the statutes of limitation of the State of Texas.

Respectfully submitted,

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CERTIFICATE

I, Major T. Bell, do hereby certify that on this the _____ day of October, 1968, I served a copy of the above and foregoing Brief, with all attachments thereto, upon Andrew A. Wassick, Post Office Box 724, Chattanooga, Tennessee 37401, the attorney for the petitioners, by United States Certified Mail, with return receipt requested.

_____

Major T. Bell

APPENDIX

1.

Article 5421c, Section 6, Texas Civil Statutes.

" 'Vacancy', when used in this Act, means an area of unsurveyed school land not in conflict on the ground with lands previously titled, awarded, or sold, which has not been listed on the records of the Land Office as school lands and which on the date of the filing was neither subject to an earlier subsisting application to purchase or lease by a discoverer or claimant nor involved in pending litigation brought by the State to recover the same."

2.

Article 5421c, Sections 1, 2 & 3, Texas Civil Statutes.

"Sec. 1. All lands heretofore set apart to the public free school funds under the Constitution and laws of Texas, and all of the unappropriated and unsold public domain remaining in this State of whatever character, except river beds, and channels, and islands, lakes and bays, and other areas within tide water limits, are subject to control and sale under the provisions of this Act.

"Sec. 2. Surveyed public free school land may be sold by the Commissioner on the first day of any month to the person offering the highest price for it after the same has been advertised for sale in accordance with this Act and the provisions of subdivision 2 of Chapter 3, Title 86, Revised Civil Statutes, 1925, relating to school land, provided that all such land within five miles of a well producing oil or gas in commercial quantities shall be subject to lease only, and the surface rights shall not be sold.

"Sec. 3. Surveyed land within the terms of this Act is defined to be all tracts or parts of tracts heretofore surveyed either on the ground or by protraction, and set apart for the public school funds and which is unsold, and for which field notes are on file in the General Land

Office or which may be delineated on the maps of said Office as such, and unsurveyed land is defined to be all areas not included in surveys on file in the General Land Office or surveys delineated on the maps thereof."

3.

Article 5509, Revised Statutes of Texas.

"Every suit to recover real estate as against a person having peaceable and adverse possession thereof, cultivating, using or enjoying the same, and paying taxes thereon, if any, and claiming under a deed or deeds duly registered, shall be instituted within five years next after cause of action shall have accrued, and not afterward. This article shall not apply to one in possession of land, who deraigns title through a forged deed. And no one claiming under a forged deed, or deed executed under a forged power of attorney shall be allowed the benefits of this article."

4.

Article 5510, Revised Statutes of Texas.

"Any person who has the right of action for the recovery of lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward. The peaceable and adverse possession contemplated in this article, as against the person having right of action, shall be construed to embrace not more than one hundred and sixty acres, including the improvements or the number of acres actually enclosed, should the same exceed one hundred and sixty acres; but when such possession is taken and held under some written memorandum of title, other than a deed, which fixes the boundaries of the possessor's claim and is duly registered, such peaceable possession shall be construed to be co-extensive with the boundaries specified in such instrument."

5.

Article 5519, Revised Statutes of Texas.

"No person who has a right of action for the recovery of real estate shall be permitted to maintain an action therefor against any person having peaceable and adverse possession of such real estate for a period of twenty-five years prior to the filing of such action, under claim of right, in good faith, under a deed or deeds, or any instrument or instruments, purporting to convey the same, which deed or deeds or instrument or instruments purporting to convey the same have been recorded in the deed records of the county in which the real estate or a part thereof is situated; and one so holding and claiming such real estate under such claim of title and possession shall be held to have a good marketable title thereto, and on proof of the above facts shall be held to have established title by limitation to such real estate regardless of coverture, minority, insanity or other disability in the adverse claimant, or any person under whom such adverse claimant claims, existing at the time of the accrual of the cause of action, or at any time thereafter. Such peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them. The adverse possession of any part of such real estate shall extend to and be held to include all of the property described in such deed or instrument conveying or purporting to convey, under which entry was made upon such land or any part thereof, and by instrument purporting to convey shall be meant any instrument in the form of a deed or which contains language showing an intention to convey even though such instrument, for want of proper execution or for other cause is void on its face or in fact."

NOTE: The above statute was amended by Acts 1967, 69th Leg., p. 740, ch. 309 §3, eff. Jan. 1, 1968, by the omission of the word coverture, the only change.